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By ECFS

December 7, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109

Dear Secretary Dortch:

The Massachusetts Department of Telecommunications and Cable ("MDTC")¹ respectfully submits this letter as reply comments pursuant to the Public Notice issued by the Federal Communications Commission ("FCC") on October 21, 2009, in the above-captioned docket, and in response to certain comments filed.

On July 17, 2009 TracFone Wireless, Inc. ("TracFone") filed a letter, requesting clarification of the so-called "one-per-household" rule² under which an Eligible Telecommunications Carrier ("ETC") "may not provide Lifeline service to more than one person

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. MASS. GEN. LAWS ch. 25C, § 1.

² We note that the "one-per-address" rule is a more accurate description, as the pertinent restriction in this matter centers more on the customer's address than on their household.

at an address.”³ In enforcing this rule, ETCs require that applicants provide a residential address as a part of their application. If records show that Lifeline service is already provided for that address, the application is rejected. The FCC requested comment on whether this rule served to exclude otherwise eligible residents of shelters and other similar facilities from receiving Lifeline services and how ETCs can provide these services to such individuals without violating this rule.⁴ The FCC also sought comment on whether other individuals in group living facilities such as nursing homes, assisted-living facilities, apartment buildings, trailer-home communities, and halfway houses are similarly affected by the rule.⁵ Lastly, the FCC requested comment on whether, and how those individuals who do not use shelters and are otherwise homeless, are impacted by the one-per-address limitation.

As a preliminary matter, the MDTC notes that TracFone filed a petition on April 27, 2009 to modify the condition that “TracFone must require each of its Lifeline customers to annually self-certify that they are the head of their household and receive Lifeline-supported service only from TracFone.”⁶ TracFone seeks to instead complete these annual verifications with a statistically valid sample of their customers.⁷ As the FCC has yet to issue a ruling on that petition, the MDTC requests that an additional opportunity for comment be provided on the issue in the instant petition once the annual certification petition is decided.

³ Letter from Mitchell Brecher, Counsel for TracFone, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-109, at 1 (filed July 17, 2009) (“TracFone Letter”).

⁴ *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Public Notice: Comment Sought on TracFone Request for Clarification of Universal Service Lifeline Program “One-Per-Household” Rule as Applied to Group Living Facilities, DA 09-2257, at 1 (Oct. 21, 2009).

⁵ *Id.*

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice: Comment Sought On TracFone Request for Modification of Condition Adopted In Commission Order Granting TracFone Forbearance from Eligible Telecommunications Carrier Requirements, DA 09-1272 (June 5, 2009).

⁷ *Id.*

Under the Lifeline and Link-Up⁸ services, qualifying subscribers can receive assistance for a single telephone line in their principal residence⁹.¹⁰ Traditionally, Lifeline services have been provided by wireline carriers. In recent years, in many states, wireless carriers have sought to provide Lifeline services as ETCs in competition with wireline ETCs. In Massachusetts, beginning in December 2008, TracFone began offering its SafeLink Wireless Lifeline service,¹¹ which consists of a free wireless handset and 80 free minutes each month.¹² Certain requirements are mandated in order to prevent fraudulent use of the service and other abuses.¹³ Specifically, customers are required to self-certify under penalties of perjury at the time of service activation (as well as annually thereafter) that they are the head of household and receive

⁸ Link-Up service, which provides a one-time discount on installation charges, is not at issue in this proceeding, since wireless ETCs providing Lifeline services do not incur installation expenses.

⁹ Additionally, the characterization of certain buildings as commercial has served to exclude those otherwise eligible from service. Comments of the National Consumer Law Center, on Behalf of Greater Boston Legal Services, *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, at 5-6 (filed Nov. 20, 2009) (noting that individuals living in single room occupancy facilities such as rooming houses and YMCAs have been denied service based on the building's classification as commercial). They suggest that "carriers and consumers could sign self-certification, under penalty of perjury, that the address listed on the application is the applicant's place of residence, and not a workplace." *Id.* at 5. While the FCC has not sought comment on this specific issue, the MDTC agrees with the National Consumer Law Center and Greater Boston Legal Services that otherwise eligible customers should not be denied service because their address is characterized as commercial despite being, in fact, their true residence and agrees with the National Consumer Law Center and Greater Boston Legal Services' proposed solution.

¹⁰ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-15, at ¶ 341 (May 8, 1997).

¹¹ For an overview of SafeLink Wireless service, see SafeLink Wireless, Lifeline Service in Massachusetts, <https://www.safelinkwireless.com/EnrollmentPublic/benefits.aspx> (last visited Dec. 4, 2009).

¹² TracFone was authorized to provide Lifeline service in Massachusetts by the FCC. *In the Matter of Federal-State Joint Board on Universal Service TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, FCC 08-100 (Apr. 11, 2008). Since then, the MDTC has assumed jurisdiction over the provision of TracFone's Lifeline service in the Commonwealth. Comments of the Massachusetts Department of Telecommunications and Cable, *In the Matter of Federal-State Board on Universal Service, Virgin Mobile USA, L.P., Petition for Limited Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts*, WC Docket No. 96-45 (Aug. 21, 2008). The MDTC has required TracFone to comply with FCC requirements, except where the MDTC has required a different state policy regarding the provision of the service.

¹³ Letter from Geoffrey Why, General Counsel, Massachusetts Department of Telecommunications and Cable, to Mitchell F. Brecher, Greenberg Traurig, LLP (Apr. 24, 2009)(on file with MDTC)("Apr. 24 MDTC Letter"); Letter from Geoffrey Why, General Counsel, Massachusetts Department of Telecommunications and Cable, to Mitchell Brecher, Greenberg Traurig, LLP (Jan. 16, 2009)(on file with MDTC)("Jan. 16 MDTC Letter"). See also *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, FCC 05-165, at ¶ 1, 6 (Sept. 8, 2005)("TracFone Order").

Lifeline-supported service only from that one provider.¹⁴ Service is limited to one Lifeline service per household,¹⁵ with a choice of either wireless or wireline. Additionally, the ETC is charged with “establishing safeguards to prevent its customers from receiving multiple [] Lifeline subsidies at the same address.”¹⁶ The MDTC additionally requires TracFone to fulfill an annual audit requirement to verify that fraud and other abuses are not occurring in the enrollment process.¹⁷ The FCC has consistently recognized the importance of safeguarding the federal Universal Fund, which subsidizes Lifeline service.¹⁸ In granting TracFone’s forbearance from the facilities requirement for ETC designation, the FCC required that TracFone “track its Lifeline customer’s primary residential address and prohibit more than one supported TracFone service at each residential address.”¹⁹ As such, any exceptions to this requirement, which serves the important purpose of preventing fraud and other abuses, must contain appropriate alternatives to tracking by address.

The MDTC endorses the adoption of a limited exception to the one-per-address restriction for the purpose of ensuring that service is available to otherwise eligible customers who are living in shelters and other similar facilities. The MDTC recommends that an additional exception be made for those otherwise qualified individuals who are without a residential address due to homelessness and who are presently denied Lifeline services on that basis. The MDTC notes that, as stated by the Cambridge Continuum of Care, many shelters limit stays to a few days at a time, and that the individuals who must transition from shelter to shelter often rely

¹⁴ The MDTC granted TracFone a waiver of the traditional enrollment verification requirements so that TracFone customers could obtain service more quickly, while still ensuring that procedures to prevent fraud were in place. Apr. 24 MDTC Letter; Jan. 16 MDTC Letter. *See also TracFone Order* at 15099.

¹⁵ SafeLink Wireless, Lifeline Service in Massachusetts, <https://www.safelinkwireless.com/EnrollmentPublic/benefits.aspx> (last visited Dec. 4, 2009).

¹⁶ *TracFone Order* at 15099.

¹⁷ Apr. 24 MDTC Letter; Jan. 16 MDTC Letter.

¹⁸ Lifeline service also is subsidized at the state level in the form of an ETC subsidy of a portion of the cost of the service.

¹⁹ *TracFone Order* at 15103.

upon a post office box or some service center as a reliable place to receive mail.²⁰ As such, even those individuals who seek assistance at shelters may not be able to use the shelter as their residential address for purposes of Lifeline service. The MDTC believes that these exceptions to the one-per-address rule must be carefully crafted with appropriate safeguards to protect against “double-dipping” and other abuses of the Lifeline program.

The MDTC agrees with TracFone that many group living situations, such as nursing homes and trailer-home communities, which are more similar to an apartment building or other multifamily dwelling unit, do not implicate the same need for an exception as does a shelter.²¹ To the extent that the above group living facilities provide separate unit numbers, each household would in fact have its own separate address, distinguishable from others in the same building by a room, suite, site, or unit number. As such, households residing in those facilities have a unique residential address for the purposes of Lifeline eligibility, and the need for an exception is not demonstrated.

The MDTC recognizes that the restriction of service to a single line per residential address, designed to prevent “double-dipping” and other abuses, should not act to prevent otherwise eligible consumers from receiving needed benefits. As such, the MDTC recommends adoption of two narrow exceptions. The MDTC proposes that otherwise qualified applicants may self certify²² under penalty of perjury, either that the address provided on the application is a shelter, or that they do not have a residential address to provide because of homelessness and that

²⁰ Letter from Fred Berman, Convener, Cambridge Continuum of Care, Cambridge Department of Human Service Programs, to Jamie Susskind, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 03-109, at 2 (filed Nov. 19, 2009).

²¹ TracFone Letter at 1.

²² The MDTC notes that several commenters proposed a certification requirement by a shelter or other service organization. We believe that self-certification is a sufficient safeguard against abuse of Lifeline services. Furthermore, limiting the exception to those individuals who are in shelters, or who receive assistance from other assistance organizations would only serve to exclude those who are likely most in need of help, such as those living on the streets.

either certification will fulfill the “residential address” requirement. Additionally, the MDTC suggests that the ETC be required to collect the last four digits of the customer’s social security number.²³ This should provide an effective alternate method to tracking by address to prevent duplicative service. The MDTC believes that these limited self certification exceptions, in addition to the “head of household” self certification requirement, and coupled with verification via social security number, is sufficient to protect against “double-dipping.”

In sum, the MDTC believes that limited exceptions, as discussed above, should be adopted to ensure that Lifeline service may be provided to eligible customers living in shelters as well as those that are homeless. These measures will ensure that qualified individuals will be able to access Lifeline services to which they are entitled while providing safeguards to prevent fraud and abuse.

Sincerely,

/s/ Geoffrey G. Why

Geoffrey G. Why, Commissioner
Massachusetts Dept. of
Telecommunications and Cable

²³ TracFone has acknowledged that they are able to use the last four digits of the customer’s social security to verify the full number via a third party. Apr. 24 MDTC Letter.